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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,222	12/22/2003	Timothy J. Blenke	KCC 4932 (K-C 18,580)	7640
321	7590	10/21/2005	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			KRUER, KEVIN R	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/743,222

Applicant(s)

BLENKE ET AL.

Examiner

Kevin R. Kruer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 14, 15, 17-25, 27-78, 89, 90, 92, 93 and 95-103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13, 16, 26, 79-88, 91, 94 and 104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/05; 3/31; 3/21.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: 3/14; 3/7; 4/20/04.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of claims 1-10, 13, 16, 26, 79-88, 91, 94, and 104 in the reply filed on June 27, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 11, 12, 14, 15, 17-25, 27-78, 89, 90, 92, 93, and 95-103 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 27, 2005.

***Information Disclosure Statement***

3. The information disclosure statements filed 9/26/2005, 3/31/2005, 3/21/2005, 3/14/2005, 3/07/2005, and 4/20/2004 have been fully considered. Initialed copies of said IDSs are enclosed herein.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-10, 13, 16, 26, 79-88, 91, 94, and 104 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhou et al (US 2002/0123538A1).

Zhou teaches an adhesive comprising an atactic polymer having a degree of crystallinity of less than about 20% and a number average molecular weight between about 1,000 and 300,000; and an isotactic polymer having a degree of crystallinity of at least about 40% and a number-average molecular weight between about 3,000 and 200,000 (claim 1). The atactic polymer may be polypropylene (claim 18), as is the isotactic polymer (claim 21). The adhesive is melt processable at less than about 4000 degrees Fahrenheit (claim 11) and the adhesive has a melt index of about 100 to about 20000 grams per 10min (claim 14). The atactic polymer comprises about 50-90wt% atactic polymer and between about 5-50wwt% isotactic polymer (claim 17). The adhesive may comprise various filler 90071) and may be used to bond polyethylene to polypropylene (paragraph 0059 and 0072).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-10, 13, 16, 26, 79-88, 91, 94, and 104 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

unpatentable over claims 1-113 of copending Application No. 10/744,332 (herein referred to as Nickel). Although the conflicting claims are not identical, they are not patentably distinct from each other because the adhesive layer of Nickel's claimed invention and the pending claims is identical and the substrates of Nickel are species that read on the claimed genus (first material and second material) of the pending claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-10, 13, 16, 26, 79-88, 91, 94, and 104 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-92 of copending Application No. 10/743,174 (herein referred to as Blenke). Although the conflicting claims are not identical, they are not patentably distinct from each other because the adhesive layer of Zhou's claimed invention is a species that reads on the claimed adhesive in the pending application and the substrates of Zhou (elastic strand and non-woven substrate) are species that read on the claimed genus (first material and second material) of the pending claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-10, 13, 16, 26, 79-88, 91, 94, and 104 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-70 of U.S. Patent No. US 6,774,069 (herein referred to as Zhou). Although the conflicting claims are not identical, they are not patentably distinct from each other

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because the adhesive layer of Nickel's claimed invention and the pending claims is identical and the substrates of Nickel are species that read on the claimed genus (first material and second material) of the pending claims.

9. Claims 1-10, 13, 16, 26, 79-88, 91, 94, and 104 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of U.S. Patent No. US 6,887,941 (herein referred to as Zhou). Although the conflicting claims are not identical, they are not patentably distinct from each other because while not identical to the adhesive of the claimed invention, the claimed adhesive is obvious in view of Zhou because the adhesive of Zhou is a specie of the claimed genus.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin R. Kruer  
Patent Examiner-Art Unit 1773